

United States District Court, Northern District of Illinois

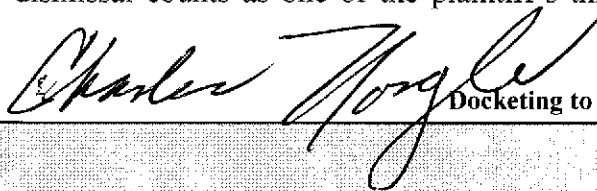
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Name of Assigned Judge or Magistrate Judge	CHARLES R. NORGLE, SR.	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	11 C 2600	DATE	4/26/11
CASE TITLE	Bennie K. Ellison (#R-00575) vs. Daniel A. Manion, et al.		

DOCKET ENTRY TEXT:

The plaintiff's motion for leave to file *in forma pauperis* [#3] is granted. However, the complaint is dismissed on initial review pursuant to 28 U.S.C. § 1915A for failure to state a claim. The case is terminated. The plaintiff's motion for appointment of counsel [#4] is denied as moot. The trust fund officer at the plaintiff's place of confinement is authorized and ordered to make deductions from the plaintiff's account and payments to the clerk of court in accordance with this order. The clerk is directed to mail a copy of this order to the trust fund officer at the Stateville Correctional Center. This dismissal counts as one of the plaintiff's three allotted dismissals under 28 U.S.C. § 1915(g).

■ [For further details see text below.]



Docketing to mail notices.

STATEMENT

The plaintiff, a state prisoner, has brought this *pro se* civil rights action presumably pursuant to 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Although the complaint is written in impenetrable "legalese," the plaintiff is evidently suing judges of the U.S. Court of Appeals for the Seventh Circuit over their handling of several appeals the plaintiff has pursued.

The court finds that the plaintiff is unable to prepay the filing fee. Accordingly, the court grants the plaintiff's motion to proceed *in forma pauperis* and assesses an initial partial filing fee of \$3.72 pursuant to 28 U.S.C. § 1915(b)(1). The trust fund officer at the plaintiff's place of incarceration is authorized and ordered to collect, when funds exist, the partial filing fee from the plaintiff's trust fund account and pay it directly to the clerk of court. Thereafter, the trust fund officer at the plaintiff's place of confinement is directed to collect monthly payments from the plaintiff's trust fund account in the amount of 20% of the preceding month's income credited to the account. Monthly payments shall be forwarded to the clerk of court each time the account balance exceeds \$10 until the full \$350 filing fee is paid. Separate deductions and payments shall be made with respect to each action or appeal filed by the plaintiff. All payments shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify the plaintiff's name and this case number.

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STATEMENT (continued)

However, under 28 U.S.C. § 1915(e)(2), the court is required to dismiss a suit brought *in forma pauperis* at any time if the court determines that it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. Here, the plaintiff is suing defendants who are immune from suit.

The Supreme Court has repeatedly held that a judge may not be held to answer in civil damages for acts committed in the exercise of his or her judicial capacity. *Mireles v. Waco*, 502 U.S. 9, 12 (1991); *Forrester v. White*, 484 U.S. 219, 228 (1988); *Stump v. Sparkman*, 435 U.S. 349, 362-63 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967). “[A] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’ ” *Stump*, 435 U.S. at 356-57; *see also Loubser v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006) (“Of course her claims against the judges are barred; . . . they have absolute immunity from such damages claims”) (citations omitted).

In fact, only a month ago, another judge of this district already informed the plaintiff that he could not sue judicial officers for their rulings. *See Ellison v. U.S. Judicial Exec. & Admin. Operations of the District Court*, Case No. 11 C 1764 (N.D. Ill.), Minute Order of March 22, 2011 (Manning, J.). This suit therefore strikes the court as “malicious.” If the plaintiff wishes to challenge any decisions made by appellate judges, his only recourse is to avail himself of the appeal process by filing a petition for a writ of *certioari* with the U.S. Supreme Court. He simply cannot sue judges, no matter how unhappy he is with their decisions.

For the foregoing reasons, this suit is dismissed for failure to state a claim upon which relief may be granted. This case constitutes the plaintiff’s second “strike.” The plaintiff is warned that if a prisoner has had a total of three federal cases or appeals dismissed as frivolous, malicious, or failing to state a claim, he may not file suit in federal court without prepaying the filing fee unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

If the plaintiff wishes to appeal this dismissal, he may file a notice of appeal with this court within thirty days of the entry of judgment. Fed. R. App. P. 4(a)(4). If the plaintiff does choose to appeal, he will be liable for the \$455 appellate filing fee irrespective of the outcome of the appeal. *Evans v. Illinois Dept. of Corrections*, 150 F.3d 810, 812 (7th Cir. 1998). Furthermore, if the appeal is found to be non-meritorious, the plaintiff may also accumulate another “strike.”